IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CR No. 194 of 2002

Decided on : 17.07.2007

Vinod Kumar Anand **Petitioner**

Versus

Ramji Dass **Respondent**

Coram:

The Hon'ble Mr Justice Surinder Singh,J.

Whether approved for reporting ?[1]

For the Petitioner: **Mr. Sanjeev Kuthiala, Advocate.**

For the Respondent: **Mr. Dushyant Dadwal, Advocate.**

Surinder Singh,J. (Oral)

In this revision petition, the defendant-petitioner has assailed the order, dated 30.4.2002, whereby the prayer of the respondent-plaintiff for an alternative relief of injunction, in a suit for possession was allowed.

The concluding para of the impugned order reads as under:

> "4. Originally, the applicant has filed a suit for possession with respect to the land measuring

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ?***

0-00-84 Hects bearing Khewat No.179, Khatauni No.391 Khasra No.607 situated in village Mubarikpur, Tehsil Amb, Distt. Una H.P. and now by way of present amendment he is seeking relief of permanent injunction by way of restraining the respondent/defendant from raising any construction and changing the nature of the said land. In a suit for possession plea of injunction cannot be said to be a contradictory plea. Whereas with respect to the submissions of the respondent that the applicant is adding new cause of action which is going to change the nature of the suit, it is submitted that earlier possession of the respondent over the suit land was permissive as respondent was prospective purchaser till he gets sale deed executed, as the respondent has not performed his part agreement within stipulated period, his possession over the suit land after the expiry of stipulated period is illegal and accordingly, nature of the suit land is required to be protected as the respondent has collected construction material over the

> suit land in order to raise construction. In the circumstances, there appears to be no adding of new cause of action as is alleged by the respondent nor original nature of suit is going to be changed. In the facts and circumstances this application is allowed, but subject to costs of Rs.200/-. Amended plaint is already on record. Be put up for additional written statement on 11.6.2002."

It is contended in the revision petition and argued that the proposed amendment could not have been allowed being contradictory. At the best the plaintiff could have moved an application under Order 39 Rule 1 and 2 CPC to protect his right qua the nature of the land, if so desired. I am convinced with the arguments of the learned counsel for the petitioner. The main anxiety of the plaintiff and the court while allowing the application under Order 6 Rule 17 CPC appears to be to preserve the nature of land, for which the provision to remedy is different. But allowing of the alternative prayer, as proposed, by the trial court goes counter to main relief of possession claimed in the petition, therefore, such a

contradictory plea cannot be allowed. Accordingly, the impugned order is set aside. Consequently, the application moved under Order 6 Rule 17 CPC stands dismissed.

The plaintiff is left at liberty to move an application under Order 39 Rule 1 and 2 CPC before the trial court, if the circumstances so warrant.

Since the matter is pending for the last more than five years in the court, suit is at the initial stage and no written statement has been filed by the defendant, it is directed that the parties shall put in appearance before the trial court on 13.8.2007. The plaintiff is at liberty to move an application under Order 39 Rule 1 and 2 CPC on the date of appearance aforesaid. If the application is moved the trial court shall fix the next date within 15 days on which date the defendant shall file reply to the said application as well as written statement to the suit. The application so moved by the plaintiff shall be decided by the learned trial court on or before 30.10.2007.

The Registry is directed to send the records of the trial court forthwith so as to reach

there on or before the date fixed. The revision petition stands disposed of. No costs. Copy **Dasti** on usual charges.

July 17,2007 (Surinder Singh),J.
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